

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

August 8, 2012

Re: Notice of Ex Parte Presentation
MM Docket No. 99-25 – Creation of a Low Power Radio Service

Dear Ms. Dortch:

On Monday, August 5, 2012, Prometheus Radio Project Policy Director, Brandy Doyle; Policy Fellow, Cynthia Grady; and Staff Attorney for the Institute for Public Representation at Georgetown Law, Laura Moy, met with Audio Division Chief, Peter Doyle; Deputy Chief, Tom Hutton; Assistant Division Chiefs, Rudy Bonacci and Kelly Donohue; Media Bureau Special Counsel, Heather Dixon (telephonically); Attorney Advisors Irene Bleiweiss, Alexander Sanjenis, and Maureen McCarthy (telephonically); and Supervisory Engineer, Edna Prado regarding matters in the above-captioned docket.

At the outset of the meeting, Ms. Doyle outlined Prometheus' concerns with the point system used to select winners among mutually exclusive applicants for low power FM ("LPFM") construction permits. She noted that in urban markets in which many new LPFM stations will be licensed, increased competition may result in a large number of "tied" mutually exclusive applications for LPFM licenses. She expressed Prometheus' appreciation for the Commission's proposed modifications intended to remedy this situation, but noted that some proposed changes may not work as intended.

Ms. Doyle raised concerns with the Commission's "mini-window" proposal, which aims to curb attempted abuses of the voluntary settlement procedure by requiring that any airtime relinquished by settlement participants be made available to other applicants, rather than shared among remaining timeshare licensees. Good faith applicants form voluntary settlements on the basis of a shared vision for a station or shared target audience, business practices, or values. Although attempted abuses of the voluntary settlement rules are possible, in many situations good faith licensees may drop out of voluntary settlements for legitimate reasons. The mini-window proposal would unfairly penalize the timeshare partners of those who drop out legitimately by requiring them to form timeshares with other applicants not of their choosing. This would essentially generate mandatory timeshares, which are often unworkable.

Although Prometheus is sympathetic to the proposal and its underlying concerns, Ms. Doyle argued that the harm to good faith licensees would outweigh the benefits of such a policy. Ms. Moy added that it would be preferable to reduce the number of timeshares in the first place by adopting a mutually exclusive application evaluation system that results in fewer ties, and that to do so the Commission must adopt more points and evaluate them in a way that results in the emergence of clear winners.

Representatives of Prometheus turned next to proposed modifications and additions to the “point system” for evaluating mutually exclusive LPFM applications. In regard to the Commission’s proposed point for groups of licensees banding together to apply as consortia, Ms. Doyle raised several concerns. She noted the increased potential for gamesmanship and the problem of ties among consortia resulting in potentially unmanageable mega-consortia. Ms. Doyle also emphasized Prometheus’ concern that the award of extra points to consortia may disadvantage minority groups. A large organization with a wider support base is more likely to be in contact with partner organizations willing to form a consortium with it than a smaller organization representing minority interests. Moreover, in well-funded and well-organized special interest communities, there may even be some overlap of board members among related non-profits. This can provide an even greater edge for these groups who wish to form consortia in communities. In the existing voluntary settlement procedure, as Ms. Doyle pointed out, minority groups and others still have the opportunity to negotiate with other applicants to create timeshares, even if they would not have been included in consortia applications.

Prometheus supports the point awarded to organizations with an established community presence; however, Ms. Doyle argued against raising the duration of established community presence from two years to four years. She explained that there is no reason to believe that organizations which have been in existence for four years are better suited as LPFM licensees than those who have existed for two years. The harms of this proposal to young but firmly-established community organizations would thus outweigh any projected benefits.

Ms. Doyle also emphasized the benefits of adopting a point for applicants that pledge to adhere to a modified “main studio” rule. More flexible than the main studio rule for full power stations, such a proposal would ask applicants to pledge to maintain production facilities which are staffed at a minimum of twenty hours per week, by either paid or unpaid staff. She noted that the main studio address should be filed with the Commission, not be a post office box, and that the station should be required to provide a landline telephone number for the studio. A preference for a main station, she argued,

would support Congress's and the Commission's goal of fostering stations that are in communication with and accessible to their local communities.

Next, Ms. Moy spoke in favor of awarding points for beneficial pledges in general. She argued that pledges are effective at creating a distribution among applicants that would otherwise be tied. In support of this, Ms. Moy pointed out that only 81% of applicants in the last LPFM licensing opportunity adopted the locally originated programming pledge.¹ This means that almost one out of five applicants did not adopt the pledge, suggesting that the point awarded based on the pledge provided a useful tool for the Commission to distinguish between similarly situated applicants. Ms. Doyle added that in its informal monitoring of LPFM licensees, Prometheus has found that most stations who pledged to originate local programming have fulfilled their promise.

Ms. Moy also raised another point proposal: a pledge to produce at least three hours of locally originated local news each week. She encouraged the Commission to take into consideration the dramatic decline in local news reported in the Commission's Information Needs of Local Communities report, as well as the more recent Critical Information Needs of Communities literature review. Encouraging the development of local news is a longstanding interest of the Commission, and LPFM stations, which are inherently hyper-local, are well-situated for the production of content to fill this gap.

With respect to the procedural aspects of mutually exclusive application evaluation, Ms. Moy encouraged the Commission to adopt some form of weighted or tiered point system that would enable it to consider the most important evaluation criteria side by side with criteria of lesser importance without distorting the relative significance of each. She presented one possible solution to accomplish this: the tiered "waterfall" evaluation system proposed by Prometheus in its comments. In the waterfall system, the Commission would evaluate competing applicants' points in consecutive tiers. This would allow the Commission to prioritize points vis-a-vis each other by assigning them to higher or lower tiers, and would also establish multiple stages for a single winner to emerge among competing applicants.

Ms. Doyle explained that Prometheus believes that the point awarded to organizations pledging to broadcast at least twelve hours per day is no longer relevant, as nearly all stations now have automation software. Finally, she expressed that Prometheus would tentatively support a carefully designed criterion for public access.

¹ Comments of Prometheus Radio Project at 44 (filed May 7, 2012).

Ms. Doyle next addressed several of the technical proposals raised by the Commission. First, she expressed Prometheus' support for the Commission's proposal to permit cross-ownership of LPFM and translators. However, Prometheus believes that such cross-ownership should be carefully limited. Ms. Doyle suggested that LPFM stations be limited to one or two translators, that some 60 dBu contour overlap be required, and that translators be restricted to rebroadcasting only the primary analog signal of the LPFM station.

In regard to the protection of translator input signals, Prometheus generally supports the use of the two methods proposed by the Commission. However, as Ms. Doyle explained, many translator records do not specify the delivery method or input signal needed to use the MITRE formula proposed by the Commission. As Prometheus has noted, "[a]s of April 23, 2012, the "delivery_method" field was blank in 1,596 of the 14,358 CDBS translator records (over 10%). Furthermore, when the delivery method was specified as off-air (either from the primary station or from another translator), in 857 records there was no indication of the primary station or the input channel."² Prometheus therefore requests that when an LPFM applicant is unable to attain the necessary information for the MITRE Formula despite reasonable efforts to do so, that the applicant not be required to afford special protections to that translator's input signal. Alternately, Prometheus asks the Commission to update the translator records prior to an LPFM window. In cases where the Commission's "ratio" method is not possible for LPFM applicants, these measures would permit applicants to use the MITRE formula method. Prometheus further proposes that LPFM applicants be permitted to submit a letter signed by the translator owner indicating that an alternative technical solution has addressed the situation. This third solution, Ms. Doyle argued, would also meet the requirements of the Local Community Radio Act ("LRCA").

Prometheus has also argued that protection of translator input signals should only be afforded to translators receiving full power stations, not translators receiving signals from other translators.³ Under the LCRA, translators are equal in status with LPFM. Translators are not required to protect LPFM signals on third-adjacent channels. In order to maintain the statutorily mandated parity, LPFMs should also not be required to protect third-adjacent translator signals.

Finally, Prometheus supports the Commission's proposal to remove IF channel minimum distance separation requirements for LPFM stations, but asks that the cutoff

² *Id.* at 24.

³ *Id.* at 25.

be stations operating at 100 watts or less rather than stations operating at less than 100 watts. As Ms. Doyle explained, the distinction between these two standards would have a negligible interference impact, but a small yet meaningful impact on LPFM availability in some markets.

Respectfully submitted,

/s/

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